IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 323 (S/S) 2007

Darshan Singh S/o late Sri Kartar Singh,
Junior Engineer, Minor Irrigation,
Block Laksar, District Haridwar. .....Petitioner.

Versus

1 State of Uttarakhand through its Secretary,
Minor Irrigation Department of Rural Development
And Panchayati Raj, Dehradun,
2. Chief Engineer and Head of the Department,
Minor Irrigation Department, Uttarakhand
Dehradun. .....Respondents.

Sri Rakesh Thapliyal, learned counsel for the petitioner,
Sri H.M. Raturi, learned Standing Counsel for State of Uttarakhand/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rakesh Thapaliyal, learned counsel for the petitioner and Sri H.M. Raturi, learned Standing Counsel for State of Uttarakhand/respondents.

Counsel for both the parties are agreed that the writ petition may be disposed of at the admission stage, itself.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

a) Issue a writ, order or direction in the nature of certiorari quashing the Govt. Order dated 20.03.2007 (annexure no. 10) passed by the respondent no. 1 as well as the order dated 20.03.2007 (annexure no. 1) passed by the respondent no.2,

b) Issue any suitable writ, order or direction which this Hon;ble Court may deem fit and proper on the basis of the facts and circumstances of the case,

c) Award the cost of the petition to the petitioner.

Vide order dated 20.03.2007 passed by the Chief Engineer/Head of the Department Minor Irrigation, Uttarakhand, Dehradun, the petitioner, who is working as Junior Engineer, Minor Irrigation Department at Vikas Khand, Laksar, was placed under suspension on the ground that although he was transferred by the Chief Engineer/ Head of the Department Minor Irrigation, Uttarakhand vide order dated 25.11.2006 to Sub Division, Kapkot district Bageshwar but he did not comply with the transfer order, as he had not joined at the new place of his posting.

Counsel for the petitioner has contended that order dated 25.11.2006 transferring the petitioner to Kapkot from Laksar was received by the petitioner only on 29.11.2006 and since treatment of his wife was going on in the Apolo Hospital, Delhi, he was unable to join at the new place of posting. Consequently, he preferred a representation on 2.12.2006 raising his grievances and requesting the authorities to cancel the transfer order. While the said representation was pending, on 4th December 2006, a letter was issued by the Chief Engineer/ Head of the Department directing the petitioner to ensure joining at new place of his posting so that he may also be asked to look after the work of Assistant Engineer of the newly created Sub Division. In fact, by the transfer order, the petitioner was also being benefited, in case he join on the said promotional post, however he could not join the post on account of compelling circumstances as his son was got injured in a road

accident at Dehradun on 13th January 2007 and was admitted to Combined Medical Institute, Dehradun from where he was referred to the advanced hospitals so that modern facilities could be provided to his son as his son was in coma. The petitioner then took his son for advanced treatment. Still his son is in coma and his treatment is going on at Fortis Hospital, Noida. In these compelling circumstances, the petitioner is unable to join at new place of his posting.

Since the petitioner, in the compelling circumstances as stated above could not join at new place of posting, hence by the impugned order dated 20th March 2007, the petitioner has been placed under suspension. Learned counsel for the petitioner has submitted that the reluctant circumstances compelled him not to join at the new place of posting but now the petitioner is willing to join the new place of posting at the earliest as directed by the Court.

Considering all the circumstances, I deem it fit and proper to direct the authorities concerned to permit the petitioner to join at Kapkot, district Bageshwar within a period of 10 days from today. However, as per contention of the petitioner, the condition of his son is critical and thus, the petitioner after joining at new place of posting may apply for leave to look after his ailing son who is in coma and is admitted in the Fortis Hospital, Noida and may make representation raising his grievances before the competent authority, and the authorities are directed that if the petitioner avails the opportunities i.e. seeks leave and moves representation, they shall take decision on the same sympathetically within a period of three weeks from the date of production of a certified copy of this order before respondents.

In case, the petitioner submits his joining at the new place of posting within 10 days from today, the authority concerned may revoke the impugned suspension order dated 20th March 2007 (annexure no. 1 to the writ petition).

With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

April 5, 2007:
NCM: